

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0389

**Adjusted Gross Income Tax
For Tax Years 1996 through 1998**

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ISSUES

I. Adjusted Gross Income—Throwback sales

Authority: Wisconsin Department of Revenue v. William Wrigley, Jr., Co., 505 U.S. 214 (1992); IC 6-3-2-2; 45 IAC 3.1-1-64

Taxpayer protests imposition of adjusted gross income tax on out of state throwback sales.

STATEMENT OF FACTS

Taxpayer manufactures mattresses with operations in several states. After an audit for tax years 1996 through 1998, the Department of Revenue ("Department") issued proposed assessments for adjusted gross income tax. Taxpayer protests these assessments. Further facts will be provided as needed.

I. Adjusted Gross Income—Throwback Sales

DISCUSSION

Taxpayer manufactures mattresses and has operations in several states. The Department conducted an audit for the tax years 1996 through 1998. As a result of this audit, the Department issued proposed assessments for adjusted gross income tax. One of the adjustments the Department made was to impose Indiana adjusted gross income tax on throwback sales taxpayer had in Arizona, Kansas and Minnesota. The Department determined that taxpayer had insufficient contacts with these states to be taxable there. Taxpayer protests that it does have sufficient contacts with those states to be taxable and so Indiana may not include income associated with those states in the Indiana adjusted gross income.

The relevant statute is IC 6-3-2-2(n), which states:

For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

- (1) in that state the taxpayer is subject to a net income tax, a franchise tax, measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or
- (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

Taxpayer has provided documentation establishing non-solicitation business activity in the three states in question for the three audit years. The United States Supreme Court's decision in Wisconsin Department of Revenue v. William Wrigley, Jr., Co., 505 U.S. 214 (1992), provides guidance for this case. In Wrigley, the Court ruled that the Wrigley chewing gum company was subject to taxation in Wisconsin even though the taxable activity was only 0.00007% (several hundred dollars in absolute terms) of Wrigley's total activity in the state. Wrigley, at 235. The Court also explained:

Accordingly, whether in-state activity other than "solicitation of orders" is sufficiently *de minimis* to avoid loss of the tax immunity conferred by § 381 depends upon whether that activity establishes a nontrivial additional connection with the taxing State.

Wrigley, at 232

Also of relevance is the Court's explanation that Wrigley's activities would not be considered in isolation, but rather were taken together to determine whether or not the activities were *de minimis*. Wrigley, at 235.

Taxpayer did submit documentation establishing non-solicitation contacts with Arizona in 1996 and 1998, Minnesota in 1998, and Kansas in 1997 and 1998. However, even when taken together as provided in Wrigley, those contacts were *de minimis*. Taxpayer has provided documentation establishing sufficient non-solicitation contacts with Arizona to make taxpayer subject to taxation in that state for the tax year 1997. Taxpayer has provided documentation establishing sufficient non-solicitation contacts with Minnesota to make taxpayer subject to taxation in that state for the tax year 1998. Taxpayer has provided documentation establishing sufficient non-solicitation contacts with Kansas to make taxpayer subject to taxation in that state for the tax years 1997 and 1998.

45 IAC 3.1-1-64 states in relevant part:

Taxpayers are not subject to throwback on sales into states in which they are taxable under this regulation [45 IAC 3.1-1-64].

Therefore, taxpayer has satisfied the requirements of IC 6-3-2-2(n) and is not subject to throwback on sales into Arizona for tax year 1997, Kansas for tax years 1997 and 1998, and Minnesota for tax year 1998 as explained in 45 IAC 3.1-1-64. Taxpayer is subject to throwback

on sales into Arizona for tax years 1996 and 1998, Kansas for tax year 1996 and Minnesota for tax years 1996 and 1997.

FINDING

Taxpayer's protest is sustained in part and denied in part.

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